

Appl. No. : 09/70,540
Filed : January 26, 2001

Examiner has indicated that Claims 9-10 would be allowable upon filing a terminal disclaimer. In addition, the Examiner indicated the allowability of Claims 9 and 10, while rejecting Claims 6-8 and 20-24 under 35 USC §102(e) over Batra U.S. Patent 5,770,500. In addition, the Office Action contained a rejection of Claims 11 and 12 under 35 USC §103(a) as being unpatentable over the Batra '500 patent further in view of Zahurak U.S. Patent 5,760,434.

The Applicant notes that the Batra '500 patent is not prior art under 35 USC §102(e) or any other sub-section of 35 USC §102. More particularly, the Batra '500 patent is based on an application filed November 15, 1996. The above-identified application, as amended in the Preliminary Amendment filed on January 26, 2001, is "a continuation of U.S. Application Serial No. 09/161,156, filed September 25, 1998, which is a division of U.S. application Serial No. 08/943,222, filed October 6, 1997, which is a file wrapper continuation of U.S. Application No. 08/576,952, filed December 22, 1995."

Thus, the identical specification and drawings have been pending in the United States Patent and Trademark Office since December 22, 1995. In that the filing date to which the above-identified application is entitled by the aforementioned chain of related application is almost eleven months earlier than the November 15, 1996 filing date of the Batra '500 patent, and cannot qualify as prior art under any section of 35 USC §102. Even if the foregoing were not controlling, the Batra '500 patent also does not qualify as prior art under 35 USC §103(c) for the reason that the Batra '500 patent is assigned to Micron Technology, Inc., the assignee of the above-identified application.

Furthermore, the Batra '500 reference fails to disclose forming a silicon electrode structure, wherein "replacing the silicon in the silicon structure with a metal, thereby forming a metal electrode" as the Applicant discloses in Claim 6. Therefore, even if the Batra '500 reference could be used as prior art, the Batra '500 reference teaches forming a conductive layer comprising silicon-germanium, which is unrelated in scope to the Applicant's disclosure in Claim 6. By this paper, Claims 6, 9-10 define the subject matter which the Applicant regards as the invention and respectfully requests reconsideration of the above-captioned application in light of the amendments and remarks contained herein.

Summarizing the foregoing, it is respectfully submitted that Claims 1-12 and 20-24, all of the claims presently pending in this application, including Claims 1-5 and 21 that the Examiner has withdrawn from consideration, are allowable. Such action is respectfully solicited.

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Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully requested to call the undersigned at the number shown below.

Dated: 4/3/02

Respectfully submitted,

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